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OFFICE OF PETITIONS

In re Application of :  
Michael S. Foster et al :  
Application No. 10/039,505 : DECISION GRANTING PETITION  
Filed: October 26, 2001 : UNDER 37 CFR 1.137(b)  
Attorney Docket No. 030048025US :

This is a decision on the petition, filed June 13, 2003, under 37 CFR 1.137(f), and supplemented June 27, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application.

The petition is GRANTED.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on April 19, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to revive for failure to timely notify the Office of the filing of an application in a foreign country must be accompanied by:

- (1) the required reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m);  
and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of October 9, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Wan Laymon at (703) 306-5685.

This application is being forwarded to Technology Center Art Unit 2665 for examination in due course.

  
Frances Hicks

Lead Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request